IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH POUSHA 1928

CRP.No. 560 of 2006()

AGAINST THE ORDER IN EP 556/2005 IN
OS.2205/1999 of MUNSIFF COURT, CHALAKUDY

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REVN. PETITIONER: 1ST JUDGMENT DEBTOR:

N.V. THILAKAN, S/O. VASU,
NJATTUVETTI HOUSE, MURINGOOR DESOM,
MELOOR VILLAGE, CHALAKUDY.

BY ADV. SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENTS: DECREE HOLDER/2ND & 3RD JUDGMENT DEBTORS:

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1. M/S. PEOPLES BANK, CHALAKUDY,
REP. BY MANAGING PARTNER C.K.JOSEPH,
S/O. CHETHALAN KUNJUVARU, NANTIPULAM VILLAGE AND
DESOM, MUKUNDAPURAM TALUK.

2. A.V.PRATHEEJ, S/O. KARUNAKARAN,
ACHIYATH HOUSE, EAST CHALAKUDY DESOM, VILLAGE.

3. RAMAMURTHY, S/O.KANTHASWAMY,
ARYABHAVAN HOTEL, EAST CHALAKUDY VILLAGE.

BY ADV. SRI.SHEEJO CHACKO
SRI.BIJU KURIAKOSE
SRI.M.N.MANOJ

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.2104/06 IN CRP 560/06

DISMISSED

10/1/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

C.R.P .NO. 560 OF 2006

Dated 10th January 2007

O R D E R

Petitioner is decree holder. First respondent is judgment debtor. For realisation of decree debt, E.P.556/05 was filed. Petitioner raised a contention that he has no sufficient means to pay decree debt. Executing court examined Manager of decree holder bank as PW1 and petitioner judgment debtor as RW1. On the evidence finding that petitioner has sufficient means, executing court directed arrest of petitioner. The order is challenged in this revision petition filed under Section 115 of Code of Civil Procedure Code.

2. Learned counsel appearing for petitioner and first respondent were heard.

3. Executing court directed the arrest of petitioner accepting the evidence of decree holder that petitioner is having a car and is getting an income of Rs.9,000/- per month from the car and is also getting Rs.10,000/- as a broker. Apart from the

interested version of PW1, no other evidence was adduced. Argument of learned counsel appearing for respondent was that petitioner admitted that he is having landed property and though it was contended that the property was auctioned for the debt due to District Co-operative Bank no evidence was adduced and in such circumstances there is no reason to interfere with the impugned order passed by executing court.

4. On going through the impugned order, it is seen that there is no sufficient evidence to hold that petitioner is having sufficient means to pay the decree debt. In such circumstances, order dated 4/7/2006 is set aside. E.P.556/05 is remanded back to Munsiff court, Chalakudy. Learned Munsiff to afford opportunity to the decree holder to prove the means of judgment debtor and pass appropriate order in accordance with law.

Revision petition is disposed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.